CONSTITUTION AND STATUTES INVOLVED

This case involves section 1 of the Fourteenth Amendment to the Constitution of the United States. Said section reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

This case also involves the "Takings Clause" of the Fifth Amendment to the Constitution of the United States, which reads in pertinent part:

> "No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Additionally, this case involves three Ohio statues: Ohio Revised Code Sections 2101.24, 2101.31, and 2311.01, which are set forth below.

OHIO REVISED CODE SECTION 2101.24
This statute reads in pertinent part as follows:

"(B)(1) The probate court has concurrent jurisdiction with and the same powers at law and equity as, the general division of the court of common pleas to issue writs and orders and to hear and determine actions as follows:

* * *

(b) Any action that involves an inter vivos trust; a trust created pursuant to section 1339.51 of the Revised Code; a charitable trust or foundation. . . .

(B)(2) Any action that involves a concurrent jurisdiction subject matter and that is before the probate court may be transferred by the probate court, on its order, to the general division of the court of common pleas."

(emphasis added)

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OHIO REVISED CODE SECTION 2101.31
"All questions of fact shall be determined by the probate judge, unless he orders them tried by a jury, or referred, as provided . . . ."

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OHIO REVISED CODE SECTION 2311.04

"Issues of law must be tried by the court, unless referred as provided in the Rules of Civil Procedure.

Issues of fact arising in actions for money only, or specific real or personal property, shall be tried by a jury unless a jury trial is waived, or unless all parties consent to a reference under the Rules of Civil Procedure.

All other issues of fact shall be tried by the court subject to its power to order any issue to be tried by a jury *** "

OTHER PERTINENT OHIO CONSTITUTIONS AND STATUTES

OHIO CONSTITUTION ARTICLE IV, SEC. 4

"(A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state.....

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law...."

OHIO REVISED CODE SECTION 2101.32

"The probate judge shall have the powers and perform the duties provided for, and shall be governed by the sections of the Revised Code and rules that apply to, the courts of common pleas and the judges of those courts. The Rules of Civil Procedures shall govern actions and proceedings in the probate court as provided in Civil Rule 73."

[Paragraph two of Revised Code Sec. 21-1.32 relating to the awarding of costs is not reproduced herein]

OHIO REVISED CODE SECTION 2101.24(B)(2)

"Any action that involves a concurrent jurisdiction subject matter and that is before the probate court, may be transferred by the probate court, on its order, to the general division of the court of common pleas."

OHIO REVISED CODE SECTION 2105.06
(Statute of Descent and Distribution)

(quoted in pertinent part)

"When a person dies intestate having title or right to any personal property or to any real estate or inheritance, in this state, the personal property shall be distributed, and the real estate or inheritance shall descend and pass parcenary, except as otherwise provided by law, in the following course:

. . . .

(F) If there is no spouse, no children or their lineal descendants, and no parent surviving, to the brothers and sisters, whether by the whole or of the half blood of the intestate, or their lineal descendants, per stirpes."